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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	**RM 9210**
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
Transport Rate Structure and Pricing	)	**CC Docket No. 91-213**
	)	
End User Common Line Charges	)	**CC Docket No. 95-72**
	)	

MCI REPLY COMMENTS

I. Introduction

MCI Telecommunications Corporation (MCI), pursuant to Section 1.405(b) of the Commission's Rules, hereby submits its reply to comments on the Petition for Rulemaking filed by the Consumer Federation of America (CFA), the International Communications Association (ICA), and the National Retail Federation (NRF) on December 9, 1997.

A broad range of commenters agrees that the Commission should grant petitioners' request that the Commission initiate a rulemaking to prescribe interstate access charges to forward looking economic cost. It is clear that events of the past year have invalidated the assumptions underlying the Commission's choice of a "market-based" approach to access reform, and that the Commission must therefore turn to

prescriptive measures. Without an immediate change in course, above-cost access charges will continue to distort the market for interstate long distance services for the foreseeable future. Furthermore, as MCI discussed in its initial comments, reducing access charges to cost is one of the most significant steps the Commission can take to accelerate facilities-based local competition — the only path of entry that still holds any promise any promise for bringing competition to the local market.

II. The Assumptions Underlying the Commission's Choice of the Market-Based Approach Have Been Invalidated

The core argument advanced by the incumbent local exchange carriers (ILECs) in opposing the CFA petition is that the Commission adopted the market-based approach less than a year ago, and that it is too soon to judge it a failure.[1] They contend that the Commission, in adopting the market-based approach, anticipated that competition would take several years to drive costs to competitive levels.[2]

Most of the other commenters recognize that the Commission should turn to prescriptive measures not only because competition is developing too slowly but, more importantly, because the key assumptions upon which the Commission based its choice of the market-based approach have been invalidated by events of the past year. In particular, it is now clear that the Commission cannot rely on widespread unbundled network-element based competition to reduce ILEC access rates. Since the adoption of

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[1] See, e.g., U S West Comments at 3.

[2] See, e.g., BellSouth Comments at 5.

the Access Reform Order the prospect of widespread UNE-based competition has been undermined by (1) recurring and nonrecurring UNE prices that exceed forward-looking economic cost; (2) the 8th Circuit's decision vacating the Commission's requirement that ILECs not separate currently-combined network elements; (3) the 8th Circuit's decision prohibiting the Commission from requiring RBOCs to comply with its pricing rules as a condition for approval of Section 271 applications; and (4) ILEC intransigence, including the ILECs' unwillingness to provide nondiscriminatory access to their OSS functions. Under these circumstances, widespread UNE-based competitive entry is not feasible.

The ILECs attempt to argue that conditions have not changed appreciably since the Commission adopted the Access Reform Order. Bell Atlantic, for example, argues that the availability of combinations of unbundled network elements was not a key factor in the Commission's adoption of the market-based approach.[3] This argument has no merit. In the Access Reform Order, the Commission specifically relied on the rules adopted in the Local Competition Order as the foundation for the market-based approach.[4] These rules included the requirement that ILECs provide combinations of unbundled network elements because, without this requirement, "requesting carriers would be seriously and unfairly inhibited in their ability to use unbundled elements to

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[3]Bell Atlantic Opposition at 5.

[4]Access Reform Order at ¶48 ("We are confident that the pro-competitive regime created by the Act and implemented by the Local Competition Order and numerous state decisions will generate workable competition over the next several years in many cases, and we would then expect that access price levels be driven to competitive levels.")

enter local markets."[5] That the Commission recognized the importance of combinations of UNEs is confirmed by its statements in the Michigan 271 Order, released shortly after the Access Reform Order, where the Commission said that "the ability of new entrants to use unbundled elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market."[6]

The combination of restrictive court interpretations and LEC intransigence has invalidated the fundamental assumption underlying the Commission's choice of the market-based approach -- that widespread UNE-based competition would put downward pressure on ILEC access charges. Because of this substantial change in circumstances, the Commission is required to initiate a rulemaking to examine alternative approaches to access reform.[7]

III. Without Widespread Availability of UNEs Priced at Forward-Looking Economic Cost, the Market-Based Approach Cannot Work

The ILECs contend that the market-based approach is still viable despite the events of the past year. They argue that competition "has not been impeded by the [8th

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[5]Local Competition Order at ¶293.

[6]In the Matter of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137, released August 19, 1997 at ¶332 (Michigan 271 Order) (emphasis added).

[7]See AT&T Comments at 16-17, Sprint Comments at 3 (citing Geller v. FCC, 610 F.2d 973, 979-980).

Circuit's] decision on the provision of unbundled network elements"[8] and that the "clear trajectory of current events is toward fulfillment of the Commission's goals."[9] In support of their claim that local competition is significant and growing, they cite such evidence as the number of interconnection agreements signed, the number of interconnection trunks, and the number of CLEC switches in their region.[10]

As an initial matter, the ILECs have been making similar claims about the growth in local competition for years, but this "competition" has had no discernable impact on the level of access charges. For example, while Bell Atlantic makes many claims about the level of competition in New York, Bell Atlantic-North continues to price its interstate access services at the maximum allowed by the price cap rules in all baskets. Even in the narrow market for interstate transport services, for which the Commission adopted the basic competitive ground rules five years ago, below-cap pricing is the exception.[11]

Moreover, the "evidence" of competition cited by the LECs in their comments shows only that competitive entry is insufficient to have any impact on access charges. USTA, for example, claims that incumbent LECs have lost nearly 1.5 million telephone

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[8]Bell Atlantic Opposition at 6.

[9]Ameritech Opposition at 5.

[10]See, e.g., USTA Comments at 7-11.

[11]Among the BOCs, only Ameritech and Nevada Bell's trunking basket pricing is below cap.

lines to competitors.[12] But USTA's own figures show that the vast majority of these CLEC customers are served via resale, which cannot constrain access charges in any way.[13] The ILECs' comments show that, in large part because of the events of the past year, CLECs have made only very limited inroads using the forms of local market entry that could potentially constrain access charges. Even if the ILECs' claims about the number of unbundled loops they have provided to competitors are accepted at face value, only a minuscule percentage of ILEC access lines have been sold to competitors as unbundled loops.[14]

The kind of competitive entry the ILECs describe in their comments -- very limited entry using the CLECs' own facilities and, in rare cases, CLEC facilities in combination with unbundled loops -- is occurring in isolated areas. However, the reality is that without widespread availability of UNEs priced at forward-looking economic cost and available in combinations competitive entry cannot occur fast enough to put

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[12]USTA Comments at 7.

[13]USTA states that Bell Atlantic has provided 208,000 resold lines and BellSouth has provided 211,000 resold lines. USTA also states that SBC has lost more than 560,000 lines to CLECs, but SBC's January 26, 1998 ex parte letter in CC Docket No. 97-121 indicates that 520,000 of these lines are resold SBC service. In its opposition to the CFA petition, Ameritech states that it has provided 489,174 resold lines. In total, then, at least 1,428,174 of the 1,500,000 lines "lost to CLECs" are resold lines.

[14]USTA claims that Bell Atlantic has provided 35,000 unbundled loops. Based on the total Bell Atlantic and NYNEX access lines reported in the 1997 Statistics of the Common Carriers (22,017,467 for Bell Atlantic and 19,119,369 for NYNEX), the claimed unbundled loop figure represents 0.09 percent of Bell Atlantic's access lines. Similarly, the 75,000 unbundled loops claimed for Ameritech represents 0.3% of Ameritech's access lines, and the 8,000 unbundled loops claimed for BellSouth represents approximately 0.03 percent of BellSouth's access lines.

downward pressure on ILEC access rates in the foreseeable future. The pace of facilities-based entry is, almost by definition, severely constrained by the time required to construct facilities or collocations and by the need for massive levels of investment. Because facilities-based local competition is starting from a base of zero, CLEC market entry based on a pure facilities-based strategy or limited use of UNEs will take years to have any effect on the level of interstate access charges.

Not only can a facilities-based strategy not be counted on to reduce access to cost, but the current level of interstate access charges constrains the financial resources available for interexchange carriers to pursue a facilities-based local strategy. Accordingly, as MCI discussed in its initial comments, one of the most significant steps the Commission can take to accelerate facilities-based competition -- the only path of entry that still holds any promise for bringing competition to the local market -- is to adopt prescriptive measures that will ensure that access charges are quickly driven to forward-looking economic cost.

The ILECs reiterate their objections to a prescriptive approach, and cite the reasons the Commission gave in the Access Reform Order for preferring a market-based approach.[15] However, the Commission made clear that its overarching goal was to reduce access charges to forward-looking economic cost and that it stood ready to adopt prescriptive measures if it determined that the market-based approach was not working.[16]

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[15]See, e.g., Ameritech Opposition at 9-10.

[16]Access Reform Order at ¶48 ("Where competition has not emerged, we reserve the right to adjust rates in the future to bring them into line with forward-looking costs. To assist us in that effort, we will require price cap LECs to submit forward-looking cost

At a minimum, as AT&T suggests, the Commission should accelerate the submission of the filing of ILEC forward-looking cost studies, as contemplated by the Access Reform Order.[17]

IV. The Commission Should Not Provide the ILECs with Additional Pricing Flexibility

Several ILECs contend that not only is it too soon for the Commission to turn to a prescriptive approach, but that the Commission should "fully implement" the market-based approach.[18] By this, they mean that the Commission should immediately adopt rules permitting the ILECs additional pricing flexibility.

The Commission's promise to address pricing flexibility issues was, like the market based approach as a whole, predicated on its assumption that the widespread availability of UNEs would facilitate significant competitive entry. Because events of the past year have undermined this key assumption, there is no reason for the Commission to address pricing flexibility issues at this time. Far from accelerating competitive pressures on access charges, as the LECs contend, additional pricing flexibility would be premature and would serve only to further slow the limited competitive entry that is occurring.

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studies of their services no later than February 8, 2001, and sooner if we determine that competition is not developing sufficiently for the market-based approach to work.")

[17]AT&T Comments at 22.

[18]See, e.g., Bell Atlantic Opposition at 12; GTE Opposition at 9-10.

V. MCI Has Flowed Access Reductions Through to its Customers

In their comments, the Telecommunications Resellers Association (TRA) and the American Petroleum Institute (API) both support petitioners' request that the Commission initiate a rulemaking to prescribe access charges to cost. TRA and API, however, suggest that the Commission should also take steps, in the rulemaking, to require IXCs to flow access charge reductions through to their customers.[19] TRA and API both believe that IXC per-minute rates have not declined by an amount commensurate with the reductions in per-minute access charges experienced by IXCs as a result of the introduction of the Presubscribed Interexchange Carrier Charge on January 1, 1998.[20]

As a nondominant carrier operating in a highly competitive market, MCI does not time its rate changes to correspond to regulatory events. Instead, it continually adjusts its rates in response to competitive pressures and anticipated changes in the level of access charges. The overall effect of MCI's rate changes over the past year has been a decline in per-minute long distance rates that exceeds, by a substantial margin, the reductions in per-minute access charges that MCI has experienced as a result of the ILECs' July 1, 1997, and January 1, 1998, tariff changes.

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[19]TRA Comments at 10-11; API Comments at 13-14.

[20]API Comments at 13.

VI. Conclusion

For the reasons stated above and in MCI's initial comments, MCI recommends that the Commission grant petitioners' petition for rulemaking.

Respectfully submitted,
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February 17, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on February 17, 1998.

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I, John E. Ferguson III, do hereby certify that copies of the foregoing Reply Comments of MCI were sent, on this 17th day of February, 1998, via first-class mail, postage pre-paid, to the following:

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